

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34442

MARITIME RAIL, LLC  
— LEASE AND OPERATION EXEMPTION —  
MEADOWS INDUSTRIAL TRACKS

Decided: December 23, 2003

On November 25, 2003, Maritime Rail, LLC (Maritime Rail), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate certain railroad properties located on the South Kearny peninsula in the Town of Kearny, Hudson County, NJ. On December 1, 2003, New Jersey Rail Carrier LLC (New Jersey Rail) filed a petition to reject Maritime Rail's exemption notice. On December 11, 2003, Maritime Rail filed its reply to the petition. The petition will be denied for the reasons stated below.

BACKGROUND

Maritime Rail's Exemption Notice and Reply Pleading. The railroad properties to be leased and operated by Maritime Rail (referred to as the "Meadows Industrial Tracks") are located in Hudson County, NJ, on the South Kearny peninsula. The subject railroad properties consist of four discrete segments, which are shown on Maritime Rail's Exhibit A-1 map (attached to the exemption notice) as: (1) an existing lead track that terminates in a track identified on the A-1 map as the "car loading track;" (2) an existing track identified on the A-1 map as the "10-car storage track;" (3) an existing track identified on the A-1 map as the "10-car capacity track for holding empties while loads are pulled;" and (4) a track identified on the A-1 map as the "10-car capacity loading track," which does not now exist but which will be constructed at a later date (this track existed in the past, but it is now paved over).

The four tracks (tracks #1, #2, #3, and #4), shown on Maritime Rail's Exhibit B-1 map (attached to its reply pleading), are located in the lower left hand corner of the map, in the vicinity of the Veckridge Chemical property. Maritime Rail has advised, in its reply pleading, that, although it indicated in its exemption petition that tracks #1 and #2 were located on property owned by Jac-Jon Associates (Jac-Jon) and that track #3 is located and track #4 will be located on property owned by BASF Corporation (BASF), it now realizes that the three existing tracks (tracks #1, #2, and #3) are located on property owned by Jac-Jon, and that only track #4 will be located on property owned by BASF. Maritime Rail has also advised, in its reply pleading, that, although it indicated in its exemption petition that the "total distance involved" was about 2,500 track feet, this distance applies only to the three existing tracks (tracks #1, #2, and #3); track #4, Maritime Rail now advises, will add another

1,000 feet to this calculation; and, therefore, when track #4 is constructed, the total distance of all four tracks will be about 3,500 feet.

Maritime Rail also advises, in its reply pleading, that the four tracks are located at the end of a Consolidated Rail Corporation (Conrail) branch line known as Meadows Industrial Track No. 1 (as shown on Maritime Rail's Exhibit B-1 map), which comes out of Conrail's nearby Meadows Yard. Maritime Rail adds that, as is commonly the case with industrial and switch tracks, there are no mileposts for tracks #1, #2, #3, and #4.

Maritime Rail indicates that it is negotiating with Jac-Jon and BASF, and expects "shortly" to execute with Jac-Jon and BASF, agreements that will allow Maritime Rail to lease and operate, and to provide common carrier rail freight service over, the described tracks. Maritime Rail adds, in its reply pleading, that it anticipates that, within 90 days, it will obtain from Jac-Jon and BASF a deed of easement and/or a lease for these tracks. Maritime Rail contends that it does not anticipate leasing land and/or track from Conrail, and Maritime Rail further contends that it does not anticipate that it will operate over the Columbia Terminal property (shown on the Exhibit B-1 map) that has been leased by New Jersey Rail.

Maritime Rail advises that its "lease and operation" transaction will involve the reactivation and restoration to common carrier rail service of trackage once operated by Conrail, over which no service has been provided for approximately 2 to 4 years. Maritime Rail adds that, because the described tracks will be used for originating and terminating trains moving in interstate commerce, Maritime Rail believes that these tracks form a line of railroad within the meaning of 49 U.S.C. 10901 et seq.

Maritime Rail advises that, once its exemption has become effective and the appropriate property leases have been executed, it will rehabilitate the subject trackage, will negotiate an interchange agreement with Conrail, and will commence operations as a Class III railroad. Maritime Rail adds that its engines will operate only on the Jac-Jon/BASF properties; the interchange of rail cars will effectively take place at the property cut line on the Jac-Jon property; and Conrail will continue to operate as it presently does over Meadows Industrial Track No. 1, serving customers such as the adjacent Veckridge Chemical facility. Maritime Rail indicates that, initially, the traffic it will transport will include outbound loads of dirt moving from BASF's facility to customers located throughout the country, inbound containerized freight coming by water from international or domestic origins for rail movement on the U.S. mainland, and inbound tank cars of food grade commodities to be transferred to barge. Maritime Rail further indicates that the dirt to be transported from the BASF facility will consist of soil sediment (also referred to as "clean dirt") that has been dredged and chemically cleaned, which will be suitable for use, by customers located throughout the United States, as ground cover and as top soil and for making building blocks. And, Maritime Rail adds, it intends to commence operations sometime during the year 2004, specifically 6 to 8 months after the Army Corps of Engineers and the State of New Jersey award a joint contract for a demonstration project involving the dredging of the Passaic River and the treatment of the dredged material.

*BASF Letter.* Attached to Maritime Rail’s exemption notice is a letter signed by a BASF “Senior Environmental Specialist.” The letter indicates: that BASF owns, on the South Kearny peninsula, a parcel of land comprised of approximately 27.1 acres; that this property has had an active industrial rail siding in the past; that BASF is now supporting the development of this property as a dredge sediment cleaning and beneficial use manufacturing facility, which will support and facilitate, in an environmentally responsible and innovative way, the deepening and dredging of New York/New Jersey port facilities, and which will create a number of beneficial use products that will require bulk transportation from the property; and that the redevelopment and refurbishment of rail infrastructure on the property and the creation of a terminal switching railroad are critical both to the short-term and long-term development of the property and to the commerce to be located there. The letter further indicates that BASF supports Maritime Rail’s effort to become a Class III railroad, and that BASF anticipates that, when the track layout has been engineered, approved by BASF, and permitted, BASF will lease to Maritime Rail appropriate rights-of-way for the installation and operation of a railroad.

New Jersey Rail’s Petition To Reject. New Jersey Rail asks that Maritime Rail’s exemption notice be rejected, claiming that the notice contains false and misleading information and, therefore, is void *ab initio*.

(1) The Board’s regulations require that the exemption notice include a statement that an agreement has been reached or details about when an agreement will be reached. See 49 CFR 1150.33(c). New Jersey Rail argues that Maritime Rail’s exemption notice is deficient in this regard, because Maritime Rail has provided no details about the agreements it anticipates reaching with Jac-Jon (the owner of the property on which tracks #1, #2, and #3 are located) and with BASF (the owner of the property on which track #4 is located).

(2) The Board’s regulations require that the exemption notice include the mileposts of the subject property. See 49 CFR 1150.33(e)(3). New Jersey Rail argues that Maritime Rail’s exemption notice fails to include milepost designations. New Jersey Rail also argues that Maritime Rail’s exemption notice includes as tracks to be leased and operated by Maritime Rail certain tracks (shown on Maritime Rail’s A-2 and A-3 maps, attached to the exemption notice) that extend into the former Columbia Terminals property that have been leased by New Jersey Rail, as indicated in New Jersey Rail’s own exemption notice (which was filed on August 7, 2003, in New Jersey Rail Carrier LLC — Acquisition and Operation Exemption — Former Columbia Terminals, Kearny, NJ, STB Finance Docket No. 34392). And, New Jersey Rail adds, although Maritime Rail’s exemption notice indicates that Maritime Rail will be leasing and operating the track that Conrail uses to serve Veckridge Chemical, in fact, Maritime Rail has no lease agreement with Conrail, whether actual or proposed.

(3) The Board’s regulations require that the exemption notice include a brief summary of the proposed transaction. See 49 CFR 1150.33(e). New Jersey Rail argues that Maritime Rail’s exemption notice also is deficient in this respect. New Jersey Rail explains: that BASF does not now

have, but merely hopes to secure, a contract to process dredge sediment; that BASF will have to construct a new turn out and loading track on which the processed sediment would be loaded into railroad cars to be shipped to destinations now unknown; that, furthermore, there is no crane shown on Maritime Rail's maps, and, therefore, no present means for handling containers of freight moving from barges and tank cars of food grade commodities moving to barges; and that, in any event, no consignee of inbound freight or outbound freight is identified in Maritime Rail's exemption notice, and there is no indication how much freight would be tendered and whether it would be sufficient to support Maritime Rail's proposed operations.

## DISCUSSION AND CONCLUSIONS

New Jersey Rail's petition to reject will be denied, because Maritime Rail's exemption notice, as clarified in certain respects by Maritime Rail's reply pleading, is in substantial compliance with the applicable regulations.

First, Maritime Rail has provided sufficient information respecting the agreements it intends to reach with Jac-Jon and BASF. Maritime Rail has indicated that these agreements will allow Maritime Rail to lease and operate, and to provide common carrier rail freight service over, the described tracks. The fact that these agreements are presently only tentative, and have not yet been finalized, is not fatal to Maritime Rail's exemption petition.

Second, Maritime Rail has provided a sufficient description of the tracks over which it intends to operate. The lack of milepost designations is not fatal; if (as Maritime Rail claims) there are no milepost designations, there is no reason to require a prospective Class III railroad to formulate such designations simply to attempt to satisfy the Board's regulations. And Maritime Rail has explained that, New Jersey Rail's argument to the contrary notwithstanding, Maritime Rail does not intend to operate over Conrail's Meadows Industrial Track No. 1.

Third, Maritime Rail has provided a sufficient summary of the proposed transaction. The prospective traffic it hopes to secure may or may not work out; but that is for the transportation market, not the Board, to determine. There is no reason to require a prospective Class III railroad like Maritime Rail to submit a detailed "business plan" respecting its anticipated operations.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

### It is ordered:

1. The petition to reject, filed December 1, 2003, by New Jersey Rail, is denied.

2. This decision is effective on the service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary